

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 23-10063-shl

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5 In the Matter of:

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7 GENESIS GLOBAL HOLDCO, LLC,

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9 Debtor.

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11

12 United States Bankruptcy Court

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

15

16 September 25, 2023

17 11:06 AM

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21 B E F O R E :

22 HON SEAN H. LANE

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: ALIANNA PERSAUD

1 HEARING re Case Conference

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

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1 P R O C E E D I N G S

2 THE COURT: Good morning. We are here this
3 morning for a status conference in Genesis Global Holdco,
4 LLC, a conference that was spurred by -- well, scheduled on
5 my part based on an email that was submitted Friday,
6 September 22nd sometime afternoon.

7 So let me find out who is here on behalf of the
8 Debtors.

9 MR. BAREFOOT: Good morning, Your Honor. Luke
10 Barefoot from Cleary Gottlieb for the Debtors.

11 THE COURT: All right. And on behalf of the
12 Official Committee?

13 MR. WEST: Good morning, Your Honor. Colin West
14 of White & Case on behalf of the Official Committee of
15 Unsecured Creditors.

16 THE COURT: All right. And on behalf of Three
17 Arrows?

18 MR. GOLDBERG: Good morning, Your Honor. Adam
19 Goldberg of Latham & Watkins on behalf of Three Arrows,
20 together with my partner, (indiscernible).

21 THE COURT: All right. And let me find out who
22 else might be here this morning who has not yet made an
23 appearance.

24 All right. It seems --

25 MR. FRENLINGHUYSEN: Good morning.

1 THE COURT: I'm sorry, go ahead, please.

2 MR. FRENLINGHUYSEN: Good morning, Your Honor.

3 It's Anson Frenlinghuysen from Hughes Hubbard & Reed for
4 Gemini Trust Company.

5 THE COURT: All right. So I apologize for
6 scheduling this given the religious holiday, but I thought
7 that it was preferable to having some confusion entering the
8 hearing on Tuesday. And confusion is not helpful when
9 parties are trying to get ready, figuring out what to do.
10 It's also not helpful in terms of keeping expenses down.

11 So I appreciate you all making the time to be
12 here. And again, I apologize to the extent it threw a curve
13 ball into thing. I will say the timing of the letter in
14 that regard was particularly poor and seemed to be
15 avoidable. So I would urge people to avoid such things
16 under such circumstances. It's just not the way to go about
17 doing things.

18 So I thought I would start off by sharing my
19 initial views of things. And then I'm happy to hear from
20 folks. And if anybody has a thought -- and again, my
21 initial thought is my initial thought. But you've got to
22 start somewhere.

23 So motions to lift stay are brought by a party.
24 My general view is if somebody doesn't want to go ahead with
25 a motion to lift the automatic stay, that since it's their

1 motion, it's their call.

2 On the other hand, a motion to lift stay that is
3 scheduled, particularly in a large case like this that has
4 some collateral consequences, if somebody doesn't want to go
5 ahead with it, they can't reap any benefit strategically by
6 virtue of the delay. In other words, you can't later argue,
7 gee, since we didn't go ahead with the motion to lift the
8 stay on this date, we now have this problem, or we think we
9 shouldn't go ahead with this thing, or whatever it is. You
10 can't weaponize it because that then makes it everybody
11 else's problem.

12 So if you don't want to go ahead with it because
13 you don't want to go ahead with it for whatever reasons,
14 that's fine. But it just can't be -- that adjournment can't
15 be used as a sword against other folks, to continue with the
16 sword and shield analogy.

17 And I guess the second observation I had is in
18 laying out these rules, it says nothing to me -- nothing
19 from me -- there's no message about what was contemplated by
20 the email, which is this notion of saying that Three Arrows
21 wants to file a motion to have a joint hearing among some
22 one, two, three, four, five, six cases, whether that's
23 simultaneous or whatever. It's not a reflection of any
24 enthusiasm for that proposal, it's just a reflection of if
25 it's a motion to lift stay, people -- the general rules of

1 the road that people get to decide whether they want to go
2 ahead.

3 So I have some thoughts about the logistics of
4 such a six-judge court conference or hearing, but that's not
5 for today because I don't even have a motion in front of me.
6 But not surprisingly, there are great logistical concerns
7 that just immediately popped to mind.

8 So those are my thoughts, for what they're worth.
9 I would love to hear everybody else's thoughts. And
10 certainly to the extent that folks have a different view and
11 can convince me that my -- that I should change my views,
12 that's fine. Again, I just wanted to start somewhere.

13 And so with that, let me hear from Three Arrows.

14 MR. GOLDBERG: Thank you, Your Honor. For the
15 record, Adam Goldberg of Latham & Watkins on behalf of Three
16 Arrows Capital. If I may, I'll just explain our reasoning
17 in a few minutes and welcome any questions that Your Honor
18 may have.

19 THE COURT: I don't know that I need to hear your
20 reasoning. Right? Again, the idea is that it's your motion
21 to lift the stay. If you don't want to prosecute your
22 motion to lift stay for whatever reason, it's your motion.
23 And so the idea behind it really is this other path that you
24 want to go down. And I don't want to talk about that
25 because today is not the day really to talk about it. I

1 don't have the motion in front of me. But I just wanted to
2 make clear that the -- it can't have other collateral
3 consequences. It can't be used as a sword in terms of
4 saying, well, Judge, because of that, we don't think
5 discovery is appropriate here that was otherwise scheduled
6 because of that. We have reviewed the change about this,
7 that, and the other thing.

8 So that's my view. If you don't want to go ahead
9 with your motion, that's fine. But it's the collateral
10 consequences of which I really just wanted to call out as a
11 potential issue.

12 MR. GOLDBERG: Thank you, Your Honor. I
13 completely understand that and we understand your
14 perspectives and take them on board well.

15 We are not seeking to delay. This is not a delay
16 tactic. I can explain the timing of it if Your Honor would
17 like, but it's somewhat beside the point.

18 We take your instruction. We intend to fully
19 proceed with discovery and all progress pursuant to our
20 court-ordered schedule that we have in place, and we're not
21 seeking to disrupt any of that by raising it, simply that
22 this situation calls out for coordination. We would like to
23 put a motion before the Court. We think that's a more
24 efficient way to have our stay motion heard together with
25 the request for coordination. But if Your Honor would like

1 to proceed, we're happy to do so tomorrow. We would just
2 ask --

3 THE COURT: Again, it's your motion. So again,
4 subject to -- and again, I'll hear from everybody. But my
5 initial reaction is subject to sort of the general rules of
6 the road, if you don't want to proceed with it, then that's
7 your call.

8 Again, it's unusual to have a party ask to have a
9 multi-court, multi-case hearing when it's not your case.
10 Right? I've certainly seen it when a debtor says, well, we
11 are the debtor, the petitioner in multiple proceedings and
12 we're asking for approval here of something we're also
13 asking for approval of somewhere else. And the standards
14 are similar or identical, the evidence is similar, we need
15 approval of both courts.

16 So I'm a little at sea in terms of understanding
17 what it is you're trying to accomplish here. But again, I
18 don't have a motion in front of me. So it's my job not to
19 prejudge because the bard says there are more things in
20 heaven and earth than are dreamt of in my philosophy. So,
21 you know, you can do what you think you need to do. But
22 again, for purposes of the motion to lift stay, my initial
23 reaction is as long as it's subject to the usual rules of
24 the road in terms of collateral consequences here, then
25 that's the thing I just wanted to get out there.

1 MR. GOLDBERG: Thank you, Your Honor. Our
2 perspective is we are a debtor in the BVI as well as in a
3 Chapter 15 case and that this situation raises exactly the
4 kind of similar issues that you described. We will put that
5 before you. We are requesting an incremental adjournment,
6 and we will live by the rules of the road for this court.

7 THE COURT: All right. And if you want -- again,
8 I don't want to cut you off. This is one of these things
9 where what we do all collectively is an art and not a
10 science. So how much to get into what you're thinking is
11 behind all of this. That's not really the point of today.
12 But if you want to give a brief, you know, one-minute
13 summary that may be helpful for all the parties on the line.

14 MR. GOLDBERG: Sure. Thank you. And we expect to
15 have a motion on these issues on file if not today,
16 tomorrow.

17 Really the situation we have, Your Honor, is that,
18 as everyone knows, Three Arrows is a debtor in its own
19 liquidation proceeding in the BVI. We have a Chapter 15
20 main case recognition in this district before Chief Judge
21 Glenn. We have asserted claims that are essentially
22 identical against four Chapter 11 debtors. These debtors
23 here, BlockFi, FTX, and Celsius. We have motions for relief
24 from the stay pending here as well as in BlockFi. The
25 status of BlockFi, Your Honor, is that on October 10th, we

1 have a hearing on our motion for relief from the stay as
2 well as a scheduling hearing on BlockFi's efforts to object
3 to the claim estimated. And we expect to have motions for
4 relief from the stay on file shortly in Celsius and FTX as
5 well.

6 The common issue here is the date of insolvency of
7 Three Arrows. When did it become insolvent? And simply
8 put, Your Honor, from our perspective, litigating this issue
9 in four separate Chapter 11 cases to get with a fifth case
10 in the BVI would be extremely wasteful with the limited
11 resources of the Three Arrows liquidation as well as,
12 frankly, the judicial resources involved and the
13 administrative expenses of the four Chapter 11 debtors. So
14 we think there's plenty of support in the Bankruptcy Code in
15 Chapter 15 and the inherent powers of the court to manage
16 dockets to consolidate these matters. And we've seen it
17 done in other cases, particularly Enron in this district.
18 So we're happy to put that on the docket, Your Honor, to tee
19 up a ruling.

20 And the type of adjournment that we're looking for
21 here to permit Your Honor to consider, what type and whether
22 to hold any joint judicial communication about how to manage
23 this process, we think we could have that hearing in a few
24 weeks subject to the notice periods and agreement of the
25 parties on when to hold that hearing.

1 THE COURT: All right. When you say -- so I
2 apologize to the extent I'm violating my rule of not jumping
3 too deep into what your intentions are. But when you say
4 consolidate these proceedings, I'm not sure what that means.
5 Have you thought through the technical aspects of what
6 you're asking for?

7 So certainly I had understood the lift stay to be
8 a lift stay to allow an issue to go ahead in another
9 proceeding, right? And so we had certainly had discussions
10 of that type in the context of FTX's motion to lift the stay
11 and the centrality as FTX argued it of certain issues to its
12 case, the impact on its case and what was appropriate to
13 litigate in its view in another forum in Delaware where it
14 was the debtor versus here.

15 Of course I understand you're talking about --
16 you've got a Chapter 15, right, in front of Judge Glenn?

17 MR. GOLDBERG: Yes, Your Honor.

18 THE COURT: so it's not the main proceeding, it's
19 -- it's seeking recognition of a foreign main proceeding.
20 So the court that is doing the adjudication I assume of
21 issues in the administration of the Three Arrows as a debtor
22 is the foreign court. Am I understanding that right?

23 MR. GOLDBERG: Yes. The BVI court is the main
24 proceeding.

25 THE COURT: Right. So is it essentially a request

1 to stay proceeding in American courts while the BVI court
2 makes a determination on issues central to Three Arrows'
3 reorganization proceeding?

4 MR. GOLDBERG: Well, Your Honor, we have our
5 request. And our request in preference would be that all of
6 these cases should go to the BVI. That's our main case.

7 THE COURT: But I don't know what you mean. Are
8 you talking about shutting down the American cases and
9 compelling them to file in a foreign jurisdiction?

10 MR. GOLDBERG: No, Your Honor. No.

11 THE COURT: Well, that's what I'm saying. When
12 you say shut these cases down and make -- you've got to be
13 more precise about what you're asking for. Because what
14 you're asking for sounds exceedingly extreme and I don't
15 think it's coming out the way you hear it in your head. So
16 can you give me more details as to what you're asking for or
17 will be asking for?

18 MR. GOLDBERG: Yes, Your Honor. What our request
19 is I think on our preference is that we have the authority
20 to obtain relief from the automatic stay in the four Chapter
21 11 cases, to have our claims for BVI preference and other
22 turnover-type proceedings heard and determined by the BVI
23 court. That would be our preference. Now --

24 THE COURT: So it's more a lift stay and abstain
25 kind of argument, right? That this Court should not be the

1 court to go ahead and move forward with these -- with
2 certain issues that relate to Three Arrows Capital and that
3 those issues should be decided in a different forum.

4 MR. GOLDBERG: Yes, Your Honor. Exactly that.
5 And I would add in the alternative that there are multiple
6 courts available here. And these are complex issues that do
7 in fact involve the laws of not only the BVI, but also the
8 United States and New York. Those are issues that Genesis
9 has raised, BlockFi has raised them as well, and we expect
10 the other parties to raise them.

11 And so what we would like to tee up is the
12 opportunity for the relevant judges to coordinate and
13 decide, should the judges agree with our preference and have
14 these issues in the BVI? And in the alternative, the
15 matters could be determined by Judge Glenn in our Chapter 15
16 case on a limited subset of common issues if that judge is
17 determined appropriate or otherwise.

18 THE COURT: All right. So I guess two
19 observations. One is that each case has its own issues,
20 right? The nature of each party's relationship is -- I'm
21 sure it has some similarities, but there are some
22 differences. And that's why you have different cases. And
23 I guess we'll see how that plays out in the wash.

24 And the second is I'm not quite sure when you talk
25 about having Judge Glenn decide the issues, what that means

1 in the context of a Chapter 15. I understood what it meant
2 in the context of FTX because it has a pending American
3 Chapter 11 in Delaware. And so there's a judge presiding
4 over that reorganization here in the United States. I'm not
5 quite sure what that means in the context of a Chapter 15
6 where there are two things -- three things that I see come
7 up in Chapter 15. One is the initial request for some sort
8 of protection of U.S. assets, two is recognition of a
9 foreign main or a foreign non-main proceeding, and three is
10 to give effect to a plan.

11 Certainly there are other things that come up from
12 time to time, but that's sort of the general playbook. So
13 I'm not sure how it fits in the playbook. I'm not sure I
14 need to know that today, and that's something that's a
15 longer conversation. I'm just trying to tease out what it
16 is that we all can expect to talk about. Because what the
17 issues are I think affects the timing of how quickly things
18 can get done in cases. So that's another reason behind
19 that.

20 So, Mr. Goldberg, anything else that you wanted to
21 briefly address in terms of giving sort of a general picture
22 of what your intent is on behalf of your client?

23 MR. GOLDBERG: I think that Your Honor has a
24 picture of what we're intending. And to briefly respond to
25 that last point, it could be in the context of an adversary

1 proceeding as foreign representatives through a Chapter 15
2 case. We have standing to bring lawsuits in the United
3 States. And that could be procedural device to consolidate
4 certain issues before one court.

5 THE COURT: All right. Thank you very much. All
6 right, with that, let me hear from the debtors. There's a
7 lot of issues to chat potentially about. And so you can let
8 me know your thoughts as to what we should talk about, what
9 we shouldn't talk about, and in what order.

10 MR. BAREFOOT: Good morning, Your Honor. Luke
11 Barefoot from Cleary Gottlieb for the debtors.

12 I think Your Honor's comments about the
13 consequences of an adjournment substantially address the
14 debtor's concerns about an adjournment. We do have a
15 scheduling order. We'll be back before Your Honor in less
16 than a month to set a pretrial briefing and trial schedule
17 on our objections to Three Arrows' claims. And I know
18 you've heard and I won't belabor the debtor's concerns about
19 the consequences of not having those claims adjudicated for
20 timely distributions to creditors in our case.

21 But, you know, with Your Honor's comments, if
22 Three Arrows wants to adjourn its motion on the eve of the
23 hearing date that it requested, as long as that doesn't have
24 collateral (indiscernible) or our ability to continue to
25 move forward in a timely manner with discovery and the other

1 processes that are contemplated by Your Honor's scheduling
2 order, so be it.

3 THE COURT: All right. Anything from the Official
4 Committee?

5 You're on mute, Counsel.

6 MR. WEST: I'm sorry about that, Your Honor.

7 THE COURT: Now you're good.

8 MR. WEST: Just briefly just to echo -- sorry,
9 Colin West from White & Case on behalf of the Official
10 Committee of Unsecured Creditors. Just to echo what Mr.
11 Barefoot said, I think our opposition to the adjournment was
12 pretty straightforward as we explained in our joinder to the
13 opposition to the substantive motion to lift the stay. You
14 know, we oppose it on the merits, but we also oppose it on
15 the grounds that it had been unreasonably delayed.

16 Certainly it is the joint liquidator's motion. If
17 they want to adjourn it, I certainly understand Your Honor's
18 comments. But our point about unreasonable delay we think
19 will apply with greater force to the extent it is heard at a
20 later date. And that is especially true if the parties
21 continue to proceed with discovery, as they should, while --
22 you know, in the interim period. Right? I mean, it's
23 certainly going to be more time, more money, more creditors'
24 recoveries spent on discovery. And we think that that is
25 going to weigh in favor of, again, denying the motion to

1 lift stay.

2 But if the joint liquidators want to adjourn the
3 motion, with all of that in mind, as Your Honor pointed out,
4 they are, generally speaking, free to do that.

5 THE COURT: All right. So before I hear back from
6 Three Arrows Capital to sort of wrap things up, just I'll
7 throw this out to the debtors and the committee. Obviously
8 I thought about how to frame the issues before coming out
9 here. And so that's why I started off that way. But I
10 don't have a monopoly on wisdom. So if there's anything
11 that you think I'm overlooking in terms of consequences to
12 the case or collateral consequences, I would certainly be
13 happy to hear about that.

14 So as you know, it's much easier to say sort of a
15 blanket statement like, well, it won't impact anything else.
16 But sometimes the devil is in the details. So if you have
17 anything else that you want to throw out for discussion or
18 consideration, I would certainly welcome that.

19 MR. BAREFOOT: Your Honor, Luke Barefoot from the
20 debtors, from Clearly Gottlieb for the debtors. Very
21 briefly.

22 We are concerned about ongoing delay in
23 adjudication of a claims objection. We do have a status
24 conference set before Your Honor for October 24th to set a
25 pretrial briefing schedule. To the extent that the cloud of

1 this belated lift-stay motion is still hanging over us at
2 that point, I think that would potentially be problematic.
3 Three Arrows has not yet filed lift stay motions in either
4 FTX or Celsius, nor have they filed this (indiscernible) or
5 whatever it's going to be motion that was the raison d'être
6 of the adjournment request.

7 So I'm a little unclear on scheduling. But I
8 think with Your Honor's comments, so long as that cannot
9 (indiscernible) as a sword, I think that addresses
10 (indiscernible).

11 THE COURT: All right. Thank you. Mr. West,
12 anything else from you?

13 MR. WEST: No, Your Honor. We agree with Mr.
14 Barefoot. And nothing further from the Committee.

15 THE COURT: all right. So let me hear from Three
16 Arrows Capital. I think you've heard what everybody has
17 said. And I think the understanding is it is your motion
18 and you are free to prosecute or not prosecute it so long as
19 that decision to adjourn at this point is not used in a way
20 offensively to affect other things going on in the case. In
21 other words, the debtors have claims objections and they are
22 what they are and they'll continue a pace. And that's where
23 we are.

24 And so, Mr. Goldberg, does that make sense from
25 your point of view? Are we all on the same page?

1 MR. GOLDBERG: Yes, it does, Your Honor. We will
2 be advancing our anticipated filings as quickly as possible
3 and we're happy to be in touch with chambers on alternative
4 hearing dates from tomorrow.

5 THE COURT: All right. So with that -- and again,
6 one of the reasons I wanted to do this today, so people know
7 what we're doing tomorrow. Again, notwithstanding the
8 challenges of the religious holidays.

9 So with that, I will -- Mr. Goldberg, I am
10 considering this an official request to adjourn Three Arrows
11 Capital's motion that's on for tomorrow. And I'm happy to
12 grant that request conditioned on the kinds of things we've
13 been talking about here this morning with the understanding
14 that it is your motion and therefore the general rules of
15 the road would allow you to adjourn it, but that adjourning
16 it doesn't have any impact on anything else. In other
17 words, it doesn't affect the timing of claims objection,
18 those procedures, those processes, discovery, and anything
19 else that's sort of on track in these cases. Because until
20 there is a stay lifted, there's -- you know, the case
21 continues a pace.

22 So with that, Mr. Goldberg, if you would file --
23 if that's acceptable if you would file on the docket a
24 notice of adjournment. And if you don't have a date yet in
25 mind, you can put on there see sine die, or just say without

1 date for those of us -- for various folks who may not have
2 taken their Latin. And we will see where we are as the case
3 unfolds.

4 And is that acceptable to you, Mr. Goldberg?

5 MR. GOLDBERG: Yes. Thank you, Your Honor.

6 THE COURT: All right. And with that, I have lost
7 track, Mr. Barefoot, of what's still on for tomorrow. You
8 know, it sometimes can be a challenge in terms of what's on
9 the agenda.

10 So if I remember right, there was one other thing
11 on dealing with leases, but you can correct me if I'm
12 misremembering.

13 MR. BAREFOOT: Your Honor, you are correct. There
14 is one other uncontested matter for approval or rejection of
15 certain executory contracts and procedures related thereto
16 going forward. It is uncontested.

17 I did want to get direction from chambers on
18 whether in addition of Mr. Goldberg's notice of adjournment,
19 he would like the debtors to file another updated agenda.

20 THE COURT: Well, I think probably the notice of
21 adjournment does it. But again, I'll be guided by you. I
22 know that you all have a much better grasp on the needs of
23 your creditor body and constituents and the constituencies
24 of the committee. So I would talk to the Committee and see
25 what you all think. That way, as long as the word gets out,

1 I'll leave it to you. But I would hope that the notice of
2 adjournment, which Mr. Goldberg will get out in the next
3 couple hours, should do the trick.

4 MR. BAREFOOT: One other point of clarification,
5 Your Honor. There was also the related Three Arrows motion
6 for sealing certain aspects of their stay relief motion. I
7 assume that will be adjourned together with the stay relief
8 motion.

9 THE COURT: Yes. I think we carried that all at
10 the same time.

11 Mr. Goldberg, does that makes sense to you?

12 MR. GOLDBERG: It does. Thank you, Your Honor.

13 THE COURT: All right. That's why it's useful to
14 have these calls, so we all know what we're doing and what
15 we're not doing for the hearings. So, all right. Anything
16 from any other party that's worth discussing in the interest
17 of efficiency, or anything else for that matter? All right.

18 Thank you all very much for taking the time this
19 morning on short notice. My intent always is that status
20 conferences should be helpful in trying to manage the case
21 and do things efficiently. So if there are ever things that
22 fall into that category, you know where to find me. Just
23 make sure to talk to each other first. But thank you all
24 for making the time here this morning. Again, my apologies
25 to the extent that this interfered with or impacted

1 anybody's religious observance. That's not my intent.

2 But anyhow, thank you very much. And I will see
3 you all tomorrow for what promises to be a much more brief
4 hearing. Thank you. Have a good day.

5 (Whereupon these proceedings were concluded at
6 11:35 AM)

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I N D E X

RULINGS

Page Line

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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Date: September 26, 2023